

DOCKET NO. AAN-CV16-6020436-S : SUPERIOR COURT
:
DONNA CIMARELLI-SANCHEZ, : J.D. OF ANSONIA-MILFORD
ADMINISTRATRIX OF THE ESTATE OF :
MAREN VICTORIA SANCHEZ :
:
VS. : AT MILFORD
:
CITY OF MILFORD, ET AL. : JANUARY 25, 2019

MOTION FOR RECONSIDERATION

Pursuant to Practice Book § 11-12, defendants City of Milford and City of Milford Board of Education ("defendants") respectfully move for reconsideration of the Court's (Stevens, J.) memorandum of decision (doc. 176.30; "Ruling") on their motion for summary judgment (doc. 176). Specifically, defendants wish to bring to the Court's attention the recent decision Ventura v. Town of E. Haven, 330 Conn. 613 (2019), issued by the Supreme Court on January 22, 2019, which clarifies the legal principles governing ministerial versus discretionary duties. These clarified principles govern unresolved issues of law in this case, and warrant clarification of the statement in footnote 12 of the Ruling.

I. LEGAL STANDARD

"The purpose of a reargument is ... to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has

been a misapprehension of facts..." Gibbs v. Spinner, 103 Conn. App. 502, 507 (2007) (citation and quotation marks omitted). Reargument "also may be used to address ... claims of law that the [movant] claimed were not addressed by the court." Id.

II. ARGUMENT

In footnote 12 of the Ruling, the Court states: "Although the defendants cited the discretionary function limitation on municipal liability under General Statutes § 52-557n(a)(2)(B) in support of their summary judgment motion, this argument was withdrawn by defense counsel at oral argument." Ruling, p. 31, n. 12. Defendants submit that this statement should be placed in context, as specific to plaintiff's abandoned allegation of discretionary negligence.

During oral argument, defense counsel noted that plaintiff had pleaded allegations of discretionary conduct in her complaint, but "then abandoned those claims" in footnote 10 in her opposition brief. See Ex. A, Arg. Tr., pp. 13-14. Plaintiff's counsel subsequently framed her remaining theory of negligence liability as follows: "The violation here is you had a mandatory duty to take steps, a continuing monitoring duty, that was violated." Id., p. 34. Defendants did not concede at argument, or otherwise, that this sweeping characterization was accurate.

In fact, no "mandatory" duty of "continuing monitoring" is prescribed in the SPIP - the concepts of whom and what to monitor, how to do so, and how long to do so, are not subject to prescription. This is because, as in the law enforcement context addressed in Ventura, there is "considerable discretion inherent" in such determinations, due to the "array of situations" which could trigger the SPIP. Id. at 631 (quoting Coley v. Hartford, 312 Conn. 150, 165 (2014)).

Defendants maintain that any ministerial breach of the SPIP in this case occurred on November 8 or 11, 2013. If plaintiff is allowed to pursue negligence liability for subsequent acts or omissions preceding the murder on April 25, 2014, defendants preserve their right to show that some or all of such acts or omissions were discretionary, and protected by their governmental immunity defense, as a matter of law. Ventura, 330 Conn. at 634.

Plaintiff has abandoned "any claims premised on discretionary acts." Pl. Opp., 4, n. 10. And even if that were not so, liability for such conduct, regardless of how it is characterized in argument, is necessarily barred by governmental immunity, unless, *inter alia*, "the circumstances would have made it apparent to a reasonable [school official] that harm [of the nature which occurred] was imminent";

Strycharz v. Cady, 323 Conn. 548, 589 (2016); regardless of what Law personnel "could have discovered after engaging in additional inquiry." Edgerton v. Clinton, 311 Conn. 217, 231 (2014).

To the extent that the Court found genuine facts in dispute that require a jury trial, these issues of law, including whether each and every contested act or omission was governed by and breached a specific, mandatory SPIP provision, must also be resolved by the Court at trial, based on a more complete record and evidence, and not the mere characterization of the legal theories advanced by counsel. Defendants respectfully request reconsideration and, if necessary, reargument on this issue of law, as clarified by Ventura.

III. CONCLUSION

For the foregoing reasons, City of Milford and City of Milford Board of Education request that the Court reconsider footnote 12 in its memorandum of decision, insofar as it may prejudice their right to assert the discretionary nature of, and governmental immunity from liability for, any and all acts or omissions which occurred after November 11, 2013 as a matter of law.

DEFENDANTS, CITY OF MILFORD
BOARD OF EDUCATION AND CITY OF
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CERTIFICATION

This is to certify that a copy of the foregoing was served via
electronic mail on January 25, 2019 to all counsel of record
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